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STATE OF NORTH CAROLINA



GOVERNMENTAL EVALUATION COMMISSION REPORT

ON

TILE CONTRACTORS

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UNIVERSITY OF NORTH CAROLINA

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SUMMARY

As directed by Chapter 143, Article 1.1, North Carolina General Statutes, the Governmental Evaluation Commission has conducted its evaluation of the *Licensing Board for Tile Contractors* created by Chapter 87, Article 3.

The Licensing Board for Tile Contractors was declared unconstitutional in 1957. The statute was repealed in 1977. This evaluation of the Tile Contractors' statute is submitted primarily to comply with the intent of the Governmental Evaluation Commission's statutory review requirements.

The Commission recommends that neither the program nor the agency be re-established.



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Governmental Evaluation Commission
Report on Tile Contractors

RECOMMENDATION:

The Commission recommends that Chapter 87, Article 3 of the North Carolina General Statutes entitled "TILE CONTRACTORS" not be re-established.

CONCLUSION:

The regulation of the occupation of tile contractors has no substantial relation to the public health, safety, or welfare, and creates a monopoly of licensed persons. Regulation of this occupation is an unwarranted interference with the fundamental right to engage in an ordinary and innocuous occupation.

There is no demonstrated public need for the regulation of tile contractors. No harm to the public will result if the Tile Contractors' licensing statute is not re-established.

FINDINGS:

The Tile Contractors statute was declared unconstitutional in 1957 as an unwarranted interference with the fundamental right to engage in an ordinary and innocuous occupation in contravention of the state constitution. The statute could not be upheld as an exercise of the police power because its provisions have no substantial relation to the public health, safety, or welfare, and it tended to create a monopoly.

The statute was repealed by Laws 1977, Chapter 143 before the Governmental Evaluation Commission was created by Laws 1977, Chapter 712.

INTRODUCTION TO GOVERNMENTAL EVALUATION COMMISSION

Chapter 143, Article 1.1, of the General Statutes terminates the regulation of various occupations. By repealing the laws establishing them, a number of boards and commissions that license or regulate occupations are scheduled to be terminated every two years. One-third of the total of these agencies will cease to exist on July 1, 1979, unless re-established by the General Assembly.

The statute requires that prior to termination each agency be reviewed by the Governmental Evaluation Commission. The Commission is charged with conducting a "performance evaluation of each program or function scheduled for termination."

Upon completion of the evaluation, the Commission will submit a report to the General Assembly, including a recommendation as to whether the program or function in question, and the responsible agency, "should be terminated, reconstituted, re-established, or continued with or without modification of the relevant statutes."

The statute states that the Commission's basic determination is "*of the need for continuance of an agency program or function*", and that it shall use 13 listed evaluation elements in making its determination. The Commission is not limited to the use of the 13 elements in determining the presence of a public need for the continuance of a program or agency.

The Commission was authorized to employ a staff to help it in its work. The staff will conduct an evaluation and report its findings to the Commission in a staff report. The agencies may be given the opportunity to appear before the Commission and respond to the staff report. After making any modifications it believes desirable, the Commission will adopt a Proposed Commission Report.

The statute requires that public hearings be held on the proposed report, after a notice of the substance of the report and other details of the hearing is published. Upon completion of the hearing and consideration of the submitted evidence and arguments with respect to this evaluation, the Commission shall adopt its final recommendations. These recommendations will then be submitted to the General Assembly for its deliberation.

SCOPE OF THE EVALUATION

The purposes of the evaluation process are stated in the statute creating the Governmental Evaluation Commission.

§143-34.10. Findings and purposes. - The General Assembly finds that state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules and regulations and that the whole process developed without sufficient legislative oversight, regulatory accountability, or a system of checks and balances. The General Assembly further finds that by establishing a system for the termination, continuation, and re-establishment of such agencies, it will be in better position to evaluate the need for the continued existence of existing and future regulatory bodies.

A recommendation on the "need for the continued existence of existing....regulatory bodies" is the end product of this evaluation process. An evaluation of "need" for the continued existence must focus on the public benefits resulting from the continued existence of a program or agency. The benefits to the persons the agency regulates are not reasons for continuing the agency.

In focusing on "need" the inevitable question that must be considered is: What is the harm to the public if there is no regulation of the occupation?

It can be argued that some possible harm is present in allowing unlicensed persons to serve the public in any occupation or capacity. There is always some risk that a member of the public will choose the wrong person in a selection process where there is no knowledge of competency or honesty. However, this selection process is a hallmark and strength of the free enterprise system.

On the other hand, regulation in any form, by any means, is

restrictive of certain individual liberties protected by Article 1.1 of the North Carolina Constitution, which provides that all persons are afforded rights of "life, liberty, and the enjoyment of the fruits of their on labor, and the pursuit of happiness." The state, through its police power, may enact legislation which invades these rights only if there is a real and substantial relationship between the legislation and the protection of the public health, safety, or welfare.

In the evaluation process, the underlying question asked by the legislature can be stated: Is this regulation a proper exercise of the state's police power? Is the public need for regulation sufficient to justify making available to the regulatory body the authority of the State of North Carolina to imprison, to fine, and to deprive the right of earning a living to a person who violates the regulatory statute? The regulatory statute makes available to the agency, for enforcement, the State Judiciary, the State Attorney General, the police, and the power to collect money for use of the agency.

The evaluation question to be answered could be stated another way: Does this regulatory statute protect the public from potential serious harm so that if there were no statute, serious harm would be done to the public's health, safety, or welfare?

The key words are "serious harm". If the answer to the evaluation question is "No", then there is no public need for the program or agency and the statute must not be continued.

If the answer is "Yes", then the Commission must look at all parts of the program and agency to determine if they are doing what the statute

calls for them to do in an efficient and effective manner.

The General Assembly is the final authority on the recommendations of the Commission. A Committee of Reference in each House of the General Assembly will hold a public hearing on the recommendations relating to each agency. In the hearing the agency has the burden of demonstrating a public need for the continued existence of the agency and its program or function.

HISTORICAL BACKGROUND OF TILE CONTRACTORS' STATUTE

In 1937 the North Carolina General Assembly enacted G.S. 87, Article 3 entitled "Tile Contractors". The statute required licensing of anyone who desired to practice tile contracting in the state. Tile contracting was defined to mean laying, setting or installing ceramic tile, marble or terrazzo floors or walls in buildings for private or public use.

Some twenty years later the North Carolina Supreme Court in the case of Roller v. Allen, 245 N.C. 516, 96 S.E. 2d 851 (1957) held the licensing statute for tile contractors unconstitutional. The court found the laying of tile to be an innocuous occupation and concluded "the statute can not be upheld as an exercise of the police power, since its provisions have no substantial relation to the public health, safety or welfare but tend to create a monopoly".

In 1941 this state's Supreme Court held that a statute found unconstitutional becomes a nullity.¹ That is, the statute is void and of no effect.

Although it was not necessary that it be done, the General Assembly in 1977, some twenty years after the statute was held unconstitutional, repealed G.S. 87 Article 3 by Session Law 1977 Chapter 143. During this same legislative session, the General Assembly enacted the "Sunset" law which schedules the Tile Contractors' statute for review prior to July 1, 1979. The effective date of the "Sunset" statute was July 1, 1977. However, the effective date of the Session Law 1977 Chapter 143, was

April 4, 1977, some three months before. Consequently the Tile Contractors' Statute no longer existed when the Sunset Act became effective.

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1. Bank of Pinehurst v. Derby, 218 N.C. 653, 12 S.E. 2d 260 (1941)

EVALUATION ELEMENTS

The statute lists 13 evaluation elements to be used in making a determination of the need for continuance of an agency program or function. The statute specifically allows other evaluation elements to be used.

The performance evaluation of the Licensing Board for Tile Contractors using the 13 elements follows:

EVALUATION ELEMENT #1

*AN IDENTIFICATION OF THE OBJECTIVES INTENDED FOR THE
AGENCY PROGRAM AND THE PROBLEM OR NEED WHICH THE PROGRAM
WAS INTENDED TO ADDRESS.*

There is no statement of objectives intended in the enabling statute for Tile Contractors.

EVALUATION ELEMENT #2

AN ASSESSMENT OF THE DEGREE TO WHICH THE ORIGINAL OBJECTIVES OF THE AGENCY PROGRAM HAVE BEEN ACHIEVED EXPRESSED IN TERMS OF PERFORMANCE, IMPACT, OR ACCOMPLISHMENTS OF THE PROGRAM AND OF THE PROBLEM OR NEED WHICH IT WAS INTENDED TO ADDRESS. SUCH ASSESSMENT SHALL EMPLOY PROCEDURES OR METHODS OF ANALYSIS WHICH THE COMMISSION DETERMINES TO BE APPROPRIATE TO THE TYPE OR CHARACTER OF THE PROGRAM.

There is no agency program under G.S. 87 Article 3.

EVALUATION ELEMENT #3

A STATEMENT OF THE PERFORMANCE AND ACCOMPLISHMENTS OF THE AGENCY PROGRAM IN THE LAST FISCAL YEAR AND OF THE BUDGETARY COSTS INCURRED IN THE OPERATION OF THE PROGRAM.

There no longer exists a Tile Contractors' licensing agency.

EVALUATION ELEMENT #4

A STATEMENT OF THE NUMBER AND TYPES OF PERSONS
SERVED BY THE AGENCY PROGRAM.

There is no agency program under G.S. 87 Article 3.

EVALUATION ELEMENT #5

A SUMMARY STATEMENT, FOR THE LAST COMPLETED FISCAL
YEAR, OF THE NUMBER BY GRADE, AND COST OF PERSONNEL
EMPLOYED IN CARRYING OUT THE AGENCY PROGRAM AND A
SUMMARY STATEMENT OF THE COST OF PERSONNEL EMPLOYED
UNDER CONTRACT IN CARRYING OUT THE PROGRAM.

There is no agency program under G.S. 87 Article 3.

EVALUATION ELEMENT #6

AN ASSESSMENT OF THE DEGREE TO WHICH THE OVERALL
POLICIES OF THE AGENCY PROGRAM, AS EXPRESSED IN THE RULES
REGULATIONS, ORDERS, STANDARDS, CRITERIA, AND DECISIONS
OF THE AGENCY MEET THE OBJECTIVES OF THE GENERAL ASSEMBLY
IN ESTABLISHING THE PROGRAM.

There is no longer a Tile Contractors' Licensing Board.

EVALUATION ELEMENT #7

AN ASSESSMENT OF THE EFFECT OF THE AGENCY PROGRAM
ON THE STATE ECONOMY INCLUDING COSTS TO CONSUMERS
AND BUSINESSES.

There is no agency program with regards to Tile Contractors.

EVALUATION ELEMENT #8

AN EVALUATION OF THE REPORTING AND RECORD-KEEPING
REQUIREMENTS AND ACTIVITIES OF THE AGENCY PROGRAM
INCLUDING THE MANAGEMENT AND CONTROL OF INFORMATION
AND RECORDS AND THE VALUE OF THE INFORMATION GATHERED
COMPARED TO THE COST OF RESPONDENTS, AND AN ASSESSMENT
OF METHODS TO REDUCE AND SIMPLIFY THE REPORTING AND
RECORD-KEEPING REQUIREMENTS.

There is no agency program under G.S. 87 Article 3.

EVALUATION ELEMENT #9

A SUMMARY STATEMENT OF THE BUDGET AND PROGRAM OF THE AGENCY FOR THE CURRENT FISCAL YEAR AND BUDGET PROJECTIONS FOR THE NEXT SUCCEEDING FISCAL YEAR IF THE PROGRAM WERE TO BE CONTINUED.

The Tile Contractors' Licensing Board has been inoperative for twenty years.

EVALUATION ELEMENT #10

AN ASSESSMENT OF WHETHER THE AGENCY HAS PERMITTED QUALIFIED APPLICANTS TO SERVE THE PUBLIC, AND WHETHER THE AGENCY HAS ENCOURAGED PARTICIPATION BY THE PUBLIC IN MAKING ITS RULES AND DECISIONS, AS OPPOSED TO PARTICIPATION SOLELY BY THE PERSONS IT REGULATES.

The Tile Contractors' Licensing Board is non-existent.

EVALUATION ELEMENT #11

*AN EVALUATION OF THE EXTENT TO WHICH OPERATION
HAS BEEN EFFICIENT AND RESPONSIVE TO PUBLIC NEEDS.*

There is no function currently being carried out under G.S 87
Article 3.

EVALUATION ELEMENT #12

*AN EVALUATION OF THE EXTENT TO WHICH COMPLAINTS
HAVE BEEN EXPEDITIOUSLY PROCESSED TO COMPLETION
IN THE PUBLIC INTEREST.*

There is no Board operating under G.S. 87 Article 3.

EVALUATION ELEMENT #13

*AN ANALYSIS OF THE SERVICES AND PERFORMANCE ESTIMATED
TO BE ACHIEVED IF THE AGENCY OR AGENCY PROGRAM WERE
CONTINUED.*

The agency created by G.S. 87 Article 3 has been discontinued with
the repeal of the enabling statute.

